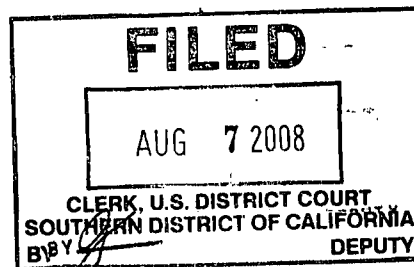


1 Nicholas J. Bontrager, Esq. (SBN 252114)
2 Krohn & Moss, Ltd.
3 5055 Wilshire Blvd, Suite 300
4 Los Angeles, CA 90036
5 T: (323) 988-2400; F: (866) 802-0021
6 Attorneys for Plaintiff,



7 **UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA**
8 **SAN DIEGO DIVISION**

9 CHARLES RODEN

10 Plaintiff,

11 vs.

12 MIDLAND CREDIT MANAGEMENT, INC.)

13 Defendant.

Case No.:

'08 CV 1444 H NLS

**VERIFIED COMPLAINT AND DEMAND
FOR JURY TRIAL**

(Unlawful Debt Collection Practices)

14 **COMPLAINT**

15 COMES NOW the Plaintiff, CHARLES RODEN ("Plaintiff"), by and through his
16 attorneys, KROHN & MOSS, LTD., and for Plaintiff's Complaint against Defendant,
17 MIDLAND CREDIT MANAGEMENT, INC., alleges and affirmatively states as follows:

18 **INTRODUCTION**

19 1. The United States Congress has found abundant evidence of the use of abusive,
20 deceptive, and unfair debt collection practices by many debt collectors, and has determined that
21 abusive debt collection practices contribute to the number of personal bankruptcies, to marital
22 instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
23 Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* (hereinafter "FDCPA"), to eliminate
24 abusive debt collection practices by debt collectors, to insure that those debt collectors who
25 refrain from using abusive debt collection practices are not competitively disadvantaged, and to

1 promote consistent State action to protect consumers against debt collection abuses. (15 U.S.C.
2 1692(a) – (e)).

3 2. Plaintiff, through Plaintiff's attorneys, brings this action to challenge the actions
4 of MIDLAND CREDIT MANAGEMENT, INC. (hereinafter "Defendant") with regard to
5 attempts by Defendant, a debt collector, to unlawfully and abusively collect a debt allegedly
6 owed by Plaintiff, and this conduct caused Plaintiff damages.

7 3. For the purposes of this Petition, unless otherwise indicated, "Defendant"
8 includes all agents, employees, officers, members, directors, heirs, successors, assigns,
9 principals, trustees, sureties, subrogees, representatives and insurers of Defendant named in this
10 caption.

11 **JURISDICTION AND VENUE**

12 4. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that
13 such actions may be brought and heard before "any appropriate United States district court
14 without regard to the amount in controversy."

15 5. Because Defendant maintains a business office and conducts business in the state
16 of California, personal jurisdiction is established.

17 6. Venue is proper pursuant to 28 U.S.C. 1391(b)(1).

18 7. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

19 **PARTIES**

20 8. Plaintiff is a natural person who resides in the State of Georgia and is obligated
21 or allegedly obligated to pay a debt and is a "consumer" as that term is defined by 15 U.S.C.
22 1692a(3).

23 9. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
24 national company with a business office in the City of San Diego, County of San Diego, State of
25 California.

1 10. Plaintiff is informed and believes, and thereon alleges, that Defendant uses
2 instrumentalities of interstate commerce or the mails in any business the principal purpose of
3 which is the collection of any debts, or who regularly collects or attempts to collect, directly or
4 indirectly, debts owed or due or asserted to be owed or due another and is a "debt collector" as
5 that term is defined by 15 U.S.C. § 1692a(6).

6 **FACTUAL ALLEGATIONS**

7 11. Defendant has been placing constant and continuous calls to Plaintiff in an
8 attempt to collect upon an alleged debt.

9 12. Defendant is seeking to speak with, or get location information for, a woman
10 named "Tongi".

11 13. Plaintiff has repeatedly informed Defendant that Tongi does not live at his home
12 and has asked Defendant repeatedly to cease making calls to him.

13 14. Defendant continues to place calls despite this.

14 15. Defendant often places calls to Plaintiff and fails to identify the caller by either
15 hanging up the line or remaining silent. (See Exhibit A).

16 16. Defendant continuously places multiple calls a day, nearly every day to Plaintiff
17 in a harassing and abusive attempt to collect upon the alleged debt owed by someone other than
18 Plaintiff. (See Exhibit A).

19 17. Defendant has placed calls to Plaintiff after 9pm.
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COUNT I

**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT,
(FDCPA), 15 U.S.C. § 1692 et seq.**

18. Plaintiff repeats, reallages and incorporates by reference all of the foregoing paragraphs.

19. Defendant **violated the FDCPA**. Defendant's violations include, but are not limited to the following:

a). Defendant violated the FDCPA § 1692c(a)(1) when Defendant, through its agents and employees, place calls to Plaintiff after 9pm.

b). Defendant violated the FDCPA § 1692d(5) when Defendant, through its agents, employees and legal counsel, place constant calls to Plaintiff and cause his phone to ring constantly and continuously in an attempt to harass and abuse him.

c). Defendant violated the FDCPA § 1692d(6) when Defendant, through its agents and employees, continuously failed to identify the caller by either hanging up the line or remaining silent when Plaintiff answered.

20. As a consequence of Defendant's foregoing actions, Plaintiff has suffered from stress, anxiety, and humiliation. (See Exhibit B).

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

21. Declaratory judgment that the Defendant's conduct violated the Federal Act, FDCPA.

22. Actual damages.

23. Statutory damages pursuant to the Federal Act, 15 U.S.C. 1692k.

24. Costs and reasonable attorney's fees pursuant to the Federal Act, 15 U.S.C. 1692k.

25. Any other relief that this court deems to be just and proper.

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DATED: July 31, 2008

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD.

By: 

Nicholas J. Bontrager
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, CHARLES RODEN, hereby demands trial by jury in this action.

VERIFICATION OF COMPLAINT AND CERTIFICATION


STATE OF GEORGIA)

Plaintiff, CHARLES RODEN, says as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, CHARLES RODEN, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 08-04-2008


CHARLES RODEN,
Plaintiff

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EXHIBIT A

From: roden_c@bellsouth.net [mailto:roden_c@bellsouth.net]
Sent: Wednesday, July 30, 2008 5:07 PM
To: Krohn, Adam
Subject: Re: Thank you for signing up with Krohn & Moss, Ltd.

I believe we have just had two more calls from this outfit. Midland Credit Mgmnt., one at 7:25 PM, and another at 7:32 PM today, 07/340/2008. The calls were "unknown" as have been all of the others. The first one this evening came with no voice at all, then the caller just hung up. The second one asked for Mr. Roden. me. and I said yes and since it was a heavy foreign accent, I asked if it was Jon, an acquaintance of mine. He mumbled something and broke the connection. He sounded just like the man who has called us numerous times seeking to collect a dead account for Friedmans Jewelers, not our account

The number each time was 968 661 0214. I also filed a complaint with the Feds.

Charles Roden

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EXHIBIT B

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I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

- | | | |
|---|------------|----|
| 1. Sleeplessness | <u>YES</u> | NO |
| 2. Fear of answering the telephone | YES | NO |
| 3. Nervousness | YES | NO |
| 4. Fear of answering the door | YES | NO |
| 5. Embarrassment when speaking with family or friends | YES | NO |
| 6. Depressions (sad, anxious, or "empty" moods) | YES | NO |
| 7. Chest pains | YES | NO |
| 8. Feelings of hopelessness, pessimism | YES | NO |
| 9. Feelings of guilt, worthlessness, helplessness | <u>YES</u> | NO |
| 10. Appetite and/or weight loss or overeating and weight gain | YES | NO |
| 11. Thoughts of death, suicide or suicide attempts | YES | NO |
| 12. Restlessness or irritability | <u>YES</u> | NO |
| 13. Headache, nausea, chronic pain or fatigue | YES | NO |
| 14. Negative impact on my job | YES | NO |
| 15. Negative impact on my relationships | <u>YES</u> | NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: continuous disruption of life and activities by persons who refuse to identify, never leave phone numbers, and abuse myself and spouse by making me nervous by refusing to aid in a legitimate business activity and being in effect, financial deadbeats, calls were also made on Saturday and Sunday

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 08-04-2008

Charles Roder
Signed Name

Charles Roder
Printed Name

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

153806 - TC

**August 08, 2008
10:25:39**

Civ Fil Non-Pris

USAO #: 08CV1444

Judge..: MARILYN L HUFF

Amount.:

\$350.00 CK

Check#: BC12124

Total-> \$350.00

FROM: CHARLES RODEN

VS

MIDLAND CREDIT MANAGEMENT

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of legal papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is to be used by the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

Charles Roden

(b) County of Residence of First Listed Plaintiff (GA)
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd.; Nicholas J. Bontrager (323) 988-2400
5055 Wilshire Blvd. Suite 300, Los Angeles, CA 90036

DEFENDANTS

Midland Credit Management Inc.

County of Residence of First Listed Defendant **San Diego**

SOUTHERN DISTRICT OF CALIFORNIA

NOTICE IN LAND CONDEMNATION CASES DEPUTY THE LOCATION OF THE
 PART INVOLVED.

Attorneys **W. Brown**

08 CV 1444 H NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Judge from Magistrate Judgement

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 et seq.

Brief description of cause:
Unlawful and abusive debt collection practices.

VII. REQUESTED IN COMPLAINT:

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S)
IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE _____

08/05/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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